

PART 2012 - AUDITS AND INVESTIGATIONS

Subpart B - Investigations and Whistleblower (Hotline) Complaints

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PART 2012 - AUDITS AND INVESTIGATIONS

Subpart B - Investigations and Whistleblower (Hotline) Complaints

§ 2012.51 Purpose.

This Instruction provides procedures for investigation of Rural Development program activities and employee misconduct. Investigative reports provide a basis for disciplinary or adverse actions, fiscal charges, loan program administrative action, and criminal or civil court actions. This Instruction also provides procedures covering the whistleblower (Hotline) complaint process.

§ 2012.52 References.

(a) Departmental Regulation 1700-2, "OIG Organization and Procedures", which defines authorities and responsibilities on OIG investigations and whistleblower (Hotline) complaints.

(b) Department Personnel Manual, Amendment No. 210, Chapter 751, dated October 20, 1989, establishes the policy and procedures for Agency investigations of employee misconduct.

§ 2012.53 Policy for investigations.

(a) The Administrator, Associate Administrator, Deputy Administrators, Assistant Administrator for Human Resources, Chief Financial Officer and other Assistant Administrators have the authority to request investigations for the National Office and Finance Office. The State Director has the authority to request investigations for their respective State. A copy of all requests will be sent to the Director, Financial Management Division (FMD), who is the Rural Development Liaison Officer. The State Management Control Officer (MCO), who is designated by the State Director as the central point-of-contact for processing investigative reports in the State Office, is responsible for tracking, monitoring, and safe-keeping of reports and related documentation. Processing and handling of investigative reports is discussed in RD Instruction 2012-C. The Office of Inspector General (OIG) Hotline can be used by an employee or citizen to report violations of gross fraud, waste, abuse, and mismanagement. Whistleblower complaints are made directly to OIG in accordance with § 2012.64 of this Instruction.

Distribution: WSDC

Administration
Audits and Investigations

(b) Rural Development employees shall request the official identification of investigators and cooperate fully with authorized OIG representatives concerning an investigation, if the inquiry relates to official matters and the information is obtained in the course of employment or as a result of a relationship incident to employment. This includes furnishing a signed statement. Failure to respond to a request for information or to appear as a witness in an official proceeding may result in disciplinary action. (Nothing herein shall be deemed to infringe upon an employee's right to invoke the protection of the Fifth Amendment to the Constitution with respect to self-incrimination.)

(c) Employees shall promptly report any instances of known or suspected violations or irregularities in the United States Department of Agriculture (USDA) programs and/or any misconduct or irregular activities by an employee(s).

(d) Any employee who is offered a bribe or who believes that a bribe was offered to, solicited by, or accepted by another employee must immediately report that information directly to the OIG. A 24-HOUR DIRECT OIG BRIBERY HOTLINE IS AVAILABLE BY CALLING (202) 720-7257 or Toll Free 1-888-620-4185. This includes situations where a forthright offer was not made, but it is suspected that the employee is being "felt out" or an offer of a bribe could reasonably be inferred. The employee will then follow the instructions of OIG on what action to take to avoid jeopardizing the investigation and to avoid disclosing the information to anyone without the prior approval of OIG.

§ 2012.54 Definitions.

Administrative action. Agency initiated action which could result in an administrative sanction.

Aggravating circumstances. Circumstances that make an incident more serious than previously thought to be. (i.e., what was thought to be an isolated incident has become a pattern.)

Case Opening Memorandum (COM). An OIG official notification to the Agency that an investigation will be initiated.

Civil action. Any civil judicial proceeding filed on behalf of a governmental Agency that results directly and substantially from an investigation.

Criminal action. Prosecution of a crime by local, State, or Federal authorities.

§ 2012.54 (Con.)

Investigation. A search for facts and evidence generally pertaining to an issue or allegation which, if proven true, would constitute a violation of a law or regulation.

Personnel Conduct Investigator (PCI). Any Rural Development employee trained and credentialed by USDA, Office of Human Resources Management (OHRM) and/or OIG to conduct noncriminal personnel misconduct investigations, including hotline complaints. The Rural Development program manager is the Agency Coordinator, Noncriminal Personnel Misconduct Investigations, located in the National Office, Headquarters Personnel Services Division (HPSD).

Program Fraud Civil Remedies Act (PFCRA). An administrative remedy for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Rural Development. Rural Development may request that OIG initiate a PFCRA investigation when criminal and civil actions are declined by the U.S. Attorney's Office. (See § 2012.80 and Exhibit B of this Instruction.)

Rural Development Liaison Officer. The initial and primary contact between OIG and Rural Development to coordinate investigative matters and whistleblower (hotline) complaints within the mission area.

Special Agent-in-Charge. The point of contact at OIG Regional Offices concerning investigative matters.

Whistleblower. A citizen or employee who contacts the OIG Hotline to report alleged fraud, waste, abuse, and/or mismanagement.

§ 2012.55 Types of investigations.

The following are examples of matters which, if known, suspected, or alleged, require referral to OIG:

(a) Violations of Federal criminal or civil statutes. These involve, but are not limited to the following irregularities by Rural Development employees, applicants, borrowers, contractors, or others:

- (1) Submission of false claims or false or fraudulent statements;
- (2) Conspiracy to defraud the United States;
- (3) Theft or damage of Government property;

- (4) Concealment, removal, obliteration, falsification, forgery, alteration or destruction of official documents, or withholding of material facts in a Government matter;
- (5) Misappropriation, embezzlement, and improperly accounting for Government funds collected or handled by Rural Development employees;
- (6) Bribery or attempted bribery of employees;
- (7) Forging or altering U.S. Treasury checks or checks made jointly to the borrower and Rural Development;
- (8) Imprest fund irregularities or shortages regardless of amount involved;
- (9) Unauthorized loan making and improper servicing or inspections;
- (10) Conspiracy to kill or kidnap, forcible assault, intimidation or interference while doing official duties;
- (11) Theft or damage of Government equipment or supplies; or
- (12) Criminal conflicts of interest (refer to 5CFR 2635).

(b) Agency investigations (minor employee misconduct). The following are matters to be handled by the Agency:

- (1) Allegations of noncriminal acts and minor infractions by employees which may include, but are not limited to:
 - (i) Absence without leave and attendance irregularities;
 - (ii) Conducting personal business during duty hours;
 - (iii) Fighting, threatening, or using abusive language to coworkers, supervisors, or the public;
 - (iv) Refusal or failure to follow instructions or procedures;
 - (v) Neglect of duty;
 - (vi) Misuse of Government vehicles;
 - (vii) Use of Government facilities, supplies, equipment, computers, telephone, or personnel for other than official purposes;

§ 2012.55(b) (Con.)

(viii) Sexual harassment; or

(ix) Intoxication or consumption of alcohol or drugs while on duty.

(2) If the Agency believes that an investigation by OIG of these types of misconduct is necessary for some specific reason, the Agency may request that OIG consider conducting such investigation.

(3) Minor employee misconduct cases must be investigated by a PCI. If a PCI is unavailable in a State; is a subordinate or supervisor of the employee being investigated; or anyone who would have the appearance of a conflict of interest with the matter being investigated; a certified PCI will be called in from another State or the National Office. When in doubt, contact the Agency Coordinator, HPSD.

(4) A written report shall be sent to the Assistant Administrator for Human Resources, Attn: HPSD, when available information is complete, when there are no apparent criminal violations, only one account is involved if the irregularity has fiscal aspects, and the matter can be disposed of by administrative action. (See § 2012.104 of RD Instruction 2012-C.)

§ 2012.56 Guidelines for investigations .

(a) National Office officials should consult with the Rural Development Liaison Officer before referring matters to the OIG, Assistant Inspector General for Investigation (AIG-I). The Centralized Servicing Center (CSC) should refer any possible borrower investigations to the appropriate State Director.

(b) The following guidelines should be used by State Offices to avoid referring matters to OIG for investigation that will not be prosecuted by the Government, to eliminate unnecessary paperwork, and avoid unreasonable delay in resolving such matters administratively or civilly.

(1) Each State Office should follow any written guidelines provided by the applicable U.S. Attorney's Office in the respective OIG Regional Office. Any doubts or uncertainty about whether the matter meets the guidelines should be resolved by a telephone call to the cognizant Special Agent-in-Charge (SAC), or Assistant Special Agent-in-Charge (ASAC) at the appropriate OIG Regional Office. (See Exhibit B of RD Instruction 2012-A).

(2) If a matter meets the guidelines, the Agency should refer the matter to OIG in writing, using a format similar to Exhibit A of this Instruction for matters involving applicants or borrowers. Cite the pertinent facts and specify what is to be investigated. The referral should accurately summarize the facts and any aggravating and mitigating circumstances. A copy of all referrals and all related correspondence that pertains to an investigation will be sent to the Rural Development Liaison Officer until closure of the investigative matter. A copy of all referrals will also be sent to the Office of General Counsel (OGC) (for borrower cases).

(3) If a matter is accepted for investigation by OIG, a Case Opening Memorandum will be issued to the appropriate official.

(4) If a matter does not meet the guidelines, no referral to OIG is necessary because absent aggravating or special circumstances, OIG would decline to investigate. The Agency is then free to pursue administrative action to resolve the matter or request the OIG to pursue the case under PFCRA.

(5) If a matter does not meet the guidelines, but there are aggravating circumstances or other special circumstances, the Agency should discuss the matter by telephone with the SAC or ASAC at the OIG Regional Office. Special circumstances include situations where an illegal act (e.g., payment assistance fraud or low dollar value conversion) by a particular borrower does not meet the guidelines but the practice is so common that an investigation or prosecution is necessary to deter similar conduct by other borrowers.

(6) In any telephone contact with the SAC or ASAC (the same as in any written referral), the Agency should provide a summary of essential information, following the format outlined in Exhibit A of this Instruction. This should include identifying the specific matters to be investigated and summarizing any evidence of specific wrongdoing.

(7) If a telephone contact results in OIG declining to investigate, the Agency employee making the telephone call should document the results in the running record of the file.

(8) A telephone contact may result in OIG requesting additional information, requesting to review the loan dockets or other Agency materials, agreeing to conduct a preliminary inquiry before making a decision about a full-scale investigation, or requesting time to confer with the U.S. Attorney. If a telephone contact results in any of these, the Agency employee should document this and comply with the SAC or ASAC's request.

§ 2012.56(b) (Con.)

(9) For investigative matters that involve servicing actions by the CSC, the MCO will work in conjunction with the CSC to coordinate the inquiry and any actions needed. The MCO will notify OIG, with a copy to the Rural Development Liaison Officer, of any administrative actions taken and request closure. (See § 2012.58 of this Instruction.)

(c) Employees will not make any comments or take action that might harm or prejudice the Government's interest in a criminal or civil court case. For example, when there is a reasonable belief that a borrower, employee, or other person may have committed a criminal act, friendly comments such as "maybe we can work something out", may later be used in court and jeopardize successful prosecutions.

(d) Requests for investigations of extremely sensitive or unusual situations shall be directed to the AIG-I or the Inspector General.

§ 2012.57 Administrative guidelines .

(a) If a fiscal problem is the result of misconduct listed in § 2012.55(a) and (b) of this Instruction by an employee, the State Director will decide if an investigation by OIG is needed or if the State Director will handle the case. For fiscal problems caused by an employee's action, the State Director will notify the National Office, Attention: HPSD. (See § 2012.104(a) of RD Instruction 2012-C.)

(b) For allegations of unauthorized political activity by employees, report the incident directly to the USDA, OHRM, 14th and Independence Avenue, SW, Washington, DC 20250-0796. A copy of the referral will be sent to the SAC, at the applicable address listed in Exhibit A of RD Instruction 2012-A, along with a copy to the Assistant Administrator for Human Resources and the Rural Development Liaison Officer.

(c) All program complaints of discrimination against a person or class, or an applicant or recipient of a Rural Development loan or grant, by a Rural Development employee should be forwarded immediately to the National Office, Attention: Director, Civil Rights Staff (CRS). State, Area and Local Office employees may take no action on such complaints until authorized by the CRS. Employees may not deny benefits or service, nor refuse to process applications for benefits, to anyone because a complaint of discrimination has been filed. When a complaint has been filed, all adverse actions (i.e., foreclosure, liquidations, etc.) must be suspended until the case has been resolved by the Department's Office of Civil Rights.

§ 2012.58 Closed investigations .

An investigative file is considered closed when the following conditions have been met:

(a) When OIG advises that the U.S. Attorney's Office has either completed or declined criminal and legal action, and all necessary administrative or civil action has been taken by the Agency, and both OIG and the Rural Development Liaison Officer are notified, in writing, of the appropriate action taken (i.e., when the borrower's account has been returned to a good standing status, or liquidation is completed and any remaining balance has been debt settled) or an explanation why administrative action is inappropriate. A final judgement or settlement in a civil case is considered by OIG as completion of legal action, even though, the amount has not been collected. OIG will consider an investigative matter closed, on their records, once they are notified that the necessary administrative action is completed such as determining amount of indebtedness and making arrangements for payments. No further notification to OIG is necessary after this point. However, the Agency is responsible for following any action necessary to conclude a case, such as collecting payments. Investigative reports will remain open on Agency records, until all funds are collected or all administrative actions are complete.

(b) In cases involving disciplinary actions:

(1) When appropriate disciplinary action is taken in the State Office on cases within the delegated authority of the State Director according to RD Instruction 2045-GG, and documents of the action have been sent to the HPSD, or when a recommendation to close the case without disciplinary action is approved in the HPSD.

(2) In cases not within the delegated authority of the State Director, when the State Director is told by the HPSD of the final decision about disciplinary action.

(3) In cases involving employees identified in an OIG investigation report, when the HPSD has notified OIG and the Rural Development Liaison Officer, in writing, of the administrative action taken against the employee or as to why administrative action was not taken and that the report can be considered closed.

§ 2012.59 Tracking responsibilities .

(a) The State Director will establish and maintain an automated system in the State Office to:

(1) Monitor and track investigations, which must include, at a minimum, the following information: the date the investigation was requested; date of the Case Opening Memorandum; date of the OIG investigation report; report number; subject; program area; action status; due date; and closed date.

(2) Monitor and track whistleblower complaints received from OIG, which must include, at a minimum, the following information: date of the hotline complaint; subject; date received from FMD; report number; program area; responsible person; date response due to FMD; action status; and closed date.

(b) The MCO will have overall responsibility for the State automated tracking system and ensure all investigative matters and whistleblower complaints are properly tracked and monitored for timely responses and resolution.

§ 2012.60 Retention of investigative reports .

All OIG investigative reports are marked "FOR OFFICIAL USE ONLY." This means these reports are for official purposes only and the restriction on use is permanent.

(a) A copy of the complete investigative report and all related correspondence will be retained for 10 fiscal years beyond closure date.

(b) Investigative reports and related material with restrictive marking must be kept in locked cabinets or other locked repository when not in use.

§ 2012.61 Distribution of investigative reports .

(a) To maintain security and confidentiality of OIG investigative reports, distribution is limited to those officials who can take action or have an official need to know the results of the investigation. Circulation of the report within the Agency will be made on a strict "need-to-know" basis and accountability will be maintained.

(b) Reports will not be reproduced or distributed outside USDA without prior clearance from OIG. Requests for release or duplication of a report should be directed to the appropriate SAC or the AIG-I for National Office cases.

(c) When investigative reports contain personal information, the information cannot be released except as permitted by the Privacy Act.

§ 2012.62 Releasing OIG investigative reports .

(a) Reports remain the property of OIG, therefore, requests for copies of investigative report from the public, outside the Department or other entities and individuals not included in OIG's distribution list, must be directed to USDA, OIG, Assistant Inspector General, Policy Development and Resources Management (PDRM), pursuant to the Freedom of Information Act and Privacy Act.

(b) Agency officials may release pertinent information to subjects of investigations to accomplish actions indicated as necessary by information in the report. Every precaution will be exercised to prevent embarrassment to the subject or any person who furnished information in connection with an investigation.

§ 2012.63 Federal Bureau of Investigation (FBI) investigations and reports .

OIG is the Department liaison with the FBI except for personnel security program matters, in which case, the Director, OHRM is the liaison. Use of FBI reports and other FBI documents or communications for administrative proceedings is generally prohibited. However, closed reports may be used with the authorization of the Director, FBI. Advance permission must be obtained from the Director, OHRM (for personnel security program matters) and OIG (for all other matters), before an FBI report or document is referenced, copied, paraphrased, quoted, portions extracted or used as part of an exhibit. Requests for use must be sent to the USDA, OIG, Assistant Inspector General, PDRM. FBI documents shall not be made available to the individual being investigated or their representative.

§ 2012.64 Whistleblower complaints .

OIG maintains a whistleblower hotline 24-hours a day, seven days a week. This hotline can be used by any employee or private citizen to report alleged violations of law, regulations or mismanagement, waste of funds, or abuse of authority. Complaints can be made anonymously or confidentially. The disclosure of a hotline complainant's identity without their consent, or the taking of reprisal action against the complainant is prohibited by law.

(a) Reporting a complaint . A complaint may be made by calling the Washington Metropolitan area (202) 690-1622, Toll Free 1-800-424-9121, or by writing to USDA, OIG, P.O. Box 23399, Washington, DC 20026.

§ 2012.64 (Con.)

(b) Answering a complaint . All complaints received from OIG are processed through the Rural Development Liaison Officer, who then determines the appropriate addressee (i.e., Assistant Administrator for Human Resources or an individual State Director). For complaints referred to a State Office, the MCO, who is the point-of-contact for hotlines, is responsible for tracking, monitoring, and safekeeping of the hotline complaint. A PCI or other designated reviewer will investigate the complaint rather than the person involved, his/her immediate supervisor, or anyone who would have the appearance of a conflict of interest. The typed complaint should not be provided to the subject of the complaint; however, all relevant issues may be discussed with the subject to resolve the complaint. The individual to whom the complaint is addressed will forward a response to the Rural Development Liaison Officer within 30 to 45 days. This response should include a detailed report of the findings and any necessary corrective action(s) with a timeframe for completion. Report responses should be mailed in a sealed envelope marked "Open by addressee only." For responses that involve servicing actions by the CSC, the State MCO is responsible for coordinating any actions with the CSC to resolve the matter and respond to the Rural Development Liaison Officer. However, once the matter is being handled by the CSC, it is the responsibility of the CSC to notify the Rural Development Liaison Officer of the actions taken until closure. If the matter needs to be referred to OIG for a possible investigation, it is the State Director's responsibility to make the request with a copy to the Rural Development Liaison Officer. (See § 2012.56(b) of this Instruction.)

(c) Retention of report . A copy of the complaint file and all related correspondence will be kept in locked cabinets or other locked repository in the State Office for 10 fiscal years beyond the closure date.

(d) Restriction on distribution of report . Whistleblower complaint reports are for official purposes only and distribution is limited to those officials who can take action or have an official need for the results of the complaint.

(e) Requests for report . Requests for information on a whistleblower complaint or for a copy of a complaint and related documents are subject to restricted release in accordance with the Freedom of Information Act and Privacy Act. Any requests should be addressed to USDA, OIG, P. O. Box 23399, Washington, D. C. 20006 or by calling 1-800-424-9121.

(f) Closing the complaint file . The complaint file is closed 30 days after the Agency's final reply to OIG, unless further information is requested by OIG within the 30 days.

§§ 2012.65 - 2012.79 [Reserved]

§ 2012.80 Program Fraud Civil Remedies Act (PFCRA).

PFCRA is an administrative remedy against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements in connection with Rural Development programs. The USDA PFCRA regulations, published at 56 FR 9582 (March 7, 1991), subpart L of part 1 of subtitle A of title 7 of the Code of Federal Regulations (7 CFR 1.301 et seq.), hereinafter designated as the USDA Rules which contain the definitions and procedures for all USDA Agency enforcement, apply to this section. The USDA Rules are contained in Exhibit B of this Instruction.

(a) The PFCRA provides for a maximum civil penalty of \$5,000 for each claim or statement. If Rural Development has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty shall also be subject to an assessment of not more than twice the amount of such claim or portion thereof. Such assessment shall be in lieu of damages sustained by Rural Development because of the claim. The civil penalty or assessment cannot exceed \$150,000.

(1) Investigating Official (IO). The IO, as defined in § 1.302 of the USDA Rules, is the OIG. The IO:

- (i) Conducts the investigation;
- (ii) Issues subpoenas, and undertakes other actions in accordance with § 1.304 of the USDA Rules, as needed; and
- (iii) Reports results and conclusions to the Reviewing Official (RO).

(2) Reviewing Official (RO). The RO, as defined in § 1.302 of the USDA Rules, is the OGC, as delegated by the General Counsel. The RO may refer the investigation to the Agency Fraud Claims Officer (AFCO) and undertake other actions in accordance with § 1.305 of the USDA Rules.

(3) Agency Fraud Claims Officer (AFCO). The AFCO, as defined in § 1.302 of the USDA Rules, is the Director, FMD. The AFCO:

- (i) Reviews the report of the IO; and
- (ii) Makes a recommendation to the RO within 45 days, if referred.

§ 2012.80(a) (Con.)

- (4) RO responsibilities . The RO will:
- (i) Accept or reject the recommendation of the AFCO;
 - (ii) Determine if there is adequate evidence of liability; and
 - (iii) If, based on the report of the IO, there is adequate evidence to believe that a person is liable under the PFCRA, the RO shall transmit to the Department of Justice a written notice, containing the information required by § 1.305(e) of the USDA Rules, of the RO's intention to issue a complaint under § 1.307 of the USDA Rules.
- (5) Approving Official (AO) . The AO is the Department of Justice. The AO approves or disapproves the issuance of a complaint in writing in accordance with § 1.306 of the USDA Rules. If approved, the RO serves the complaint on the Respondent as provided in § 1.308 of the USDA Rules.
- (6) Respondent . The Respondent is any person, as defined in § 1.302 of the USDA Rules, who is alleged in a complaint issued under § 1.307 of the USDA Rules to be liable for a civil penalty or assessment under § 1.303 of the USDA Rules. The Respondent:
- (i) May file an answer with the RO, admitting or denying the allegations within 30 days of the receipt of the complaint (or refusal to accept service of the complaint) in accordance with § 1.309 of the USDA Rules;
 - (ii) May request a hearing to answer to the complaint; and
 - (iii) May take other actions as specified in the USDA Rules.
- (7) Administrative Law Judge (ALJ) . An ALJ as defined in § 1.302 of the USDA Rules. The ALJ:
- (i) Conducts the hearing;
 - (ii) Issues an initial decision in accordance with § 1.336 of the USDA Rules; and
 - (iii) Takes any other action authorized under the USDA Rules.

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§ 2012.80 (Con.)

(b) The Department of Justice is responsible for judicial enforcement of penalties and assessments under PFCRA. All amounts collected under PFCRA are deposited as miscellaneous receipts in the Treasury of the United States.

§§ 2012.81 - 2012.100 [Reserved]

Attachments: Exhibits A [Reserved], B, and C

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Request for Borrower Investigation

To insure the proper evaluation of complaints by the Office of Inspector General (OIG), requests for investigation of Rural Development borrowers suspected of violations of U.S. Department of Agriculture (USDA) programs, should include the following information:

1. Borrower's name, address, and county where loan was obtained.
2. A listing of each outstanding loan showing the loan date, loan type, loan amount, and outstanding balance.
3. A statement of any aggravating circumstances surrounding the violation, including any attempt by the borrower to deceive Rural Development, or breach public trust.
4. A statement of any mitigating circumstances surrounding the violation, such as illness, mental infirmity, or age of the borrower.
5. A statement of the actual Rural Development practices and procedures in force at the time the violation occurred and the borrower's compliance with or disregard of such requirements.
6. A statement of the efforts by Rural Development to ensure compliance, including all statements, explanations, or admissions made by the borrower about his/her involvement.
7. A statement of Rural Development's knowledge of and response to any prior violations, including the exact time Rural Development became aware of the situation and any explicit or tacit approvals given by Rural Development employees to the borrower.
8. A listing of all subsequent administrative actions taken by Rural Development after a known violation, such as the granting of a new loan to the borrower.

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Exhibits C not automated see manual

